

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BEST VALUE AUTO PARTS	)	
DISTRIBUTORS, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 19-12291
	)	
v.	)	District Judge David Lawson
	)	Mag. Judge Elizabeth Stafford
QUALITY COLLISION PARTS, INC.,	)	
NATHIR HERMEZ, AND JOSE OJEDA,	)	
	)	
Defendants	)	

**MOTION FOR DISMISSAL IN MANNER CONSISTENT  
WITH SETTLEMENT AGREEMENT**

Pursuant to FED. R. CIV. P. 41(a)(2), Plaintiff Best Value Auto Parts Distributors, Inc., respectfully requests that the Court enter an order of dismissal without prejudice in the specific form set forth herein, and in support would show the following:

1. On May 2, 2023, Best Value, Quality, and Hermez attended mediation (the “Parties”). Defendant Jose Ojeda did not attend.
2. At the conclusion of the mediation, the Parties signed a Mediator’s Proposed Resolution (**Exhibit A**, the “Agreement”).
3. The Agreement requires certain payments by Defendants Quality and Hermez and the execution of mutual releases. (Ex. A, ¶¶ 1-2 (emphasis added).)

4. The Agreement further provides that “[t]he parties will authorize their attorneys to prepare, execute and submit to the Court a Stipulation and Order for Dismissal of the Complaint with prejudice and without costs to either party upon the performance of the parties’ obligations under this Agreement as described above,” i.e., in Paragraphs 1-2 of the Agreement. (*Id.*, ¶ 3.)

5. The Agreement also provides that “[t]he Court will maintain jurisdiction over this matter for purposes of enforcing this Agreement.” (*Id.*)

6. The Agreement also requires the Parties to “execute the documentation necessary to effectuate the terms of this Agreement.” (*Id.*)

7. The Agreement also provides that it “is a complete and entire agreement and not simply an agreement to make an agreement. **It is enforceable as here written.**” (*Id.*, ¶ 4 (emphasis added).)

8. The terms of the Agreement are not confidential.

9. The Court’s case manager advised the Parties that dismissal papers were to be submitted to the Court on or before May 30, 2023.

10. On May 10, 2023, counsel for Best Value circulated to all counsel a draft Stipulation and Order consistent with the Agreement. (**Exhibit B**, Email dated May 10, 2023.)

11. More specifically, the draft Stipulation and Order provided that (a) Best Value’s claims against Quality and Hermez are to be dismissed without prejudice;

(b) the Court is to maintain jurisdiction to enforce the Agreement; and (c) once all payments are made, the Parties sign a mutual release, and the Parties certify same to the Court, the Court is to dismiss the claims against Quality and Hermez with prejudice, without costs or attorney's fees to Best Value, Quality, or Hermez. The Agreement is incorporated by reference in the proposed Order. (**Exhibit C**, Best Value's Proposed Stipulation and Order, at 3.)

12. On May 15, 2023, counsel for Quality and Hermez proposed preparing a new settlement agreement to replace the Agreement. (**Exhibit D**, Emails Dated May 15, 2023.)

13. The same day, Best Value's counsel explained that Best Value would be happy to discuss whatever Quality and Hermez had in mind, but that Best Value was satisfied with the Agreement as written and "would not want you to put the time in drafting something until we know that all parties would be amenable to your proposal." (*Id.*)

14. Best Value's counsel reiterated these points on a call later the same day.

15. Counsel for Quality and Hermez did not circulate a draft settlement agreement.

16. On May 24, 2023, counsel for Best Value emailed a reminder asking counsel for Quality and Hermez for consent to sign and file the Stipulation and Order. (**Exhibit E**, Email dated May 24, 2023.)

17. Counsel for Quality and Hermez did not respond.

18. On May 30, 2023, Best Value's counsel sent another reminder and indicated that a response was needed by 3:30 p.m. (**Exhibit F**, Emails Dated May 30, 2023.)

19. At 3:38 p.m. on May 30, 2023, counsel for Quality and Hermez sent an email asking why the Agreement would be filed with the Court. (*Id.*)

20. At 4:04 p.m. on May 30, 2023, counsel for Quality and Hermez sent a redline of the Stipulation and Order that deleted the parts incorporating the Agreement by reference and deleting the paragraph providing for dismissal with prejudice once the requirements of Paragraphs 1-2 of the Agreement, pertaining to payment and a mutual release, were met. (**Exhibit G**, Quality's Redline.)

21. The revision proposed by Quality and Hermez makes the Order confusing and incomplete by omitting the conditions under which the claims against Quality and Hermez are to be dismissed with prejudice. (*See id.* at 3.)

22. Though the Parties agreed that the Agreement should be enforced by the Court, the redline deletes the language attaching and incorporating the Agreement by reference in the Order. (*See id.* at 1-2.)

23. Prior to filing this motion, the undersigned contacted counsel for Quality and Hermez by phone to explain the basis of the motion and seek concurrence in the relief sought. Concurrence was denied.

24. Though Quality and Hermez did not bargain for a confidentiality provision, and though the Agreement they signed does not include any confidentiality obligations, counsel for Quality and Hermez objected strenuously to attaching the Agreement to the Order. Notwithstanding the lack of any legal basis for this objection, Best Value has as a courtesy redacted the numbers from the copy of the Agreement attached to this motion as Exhibit C. An unredacted copy can be furnished upon request.

For these reasons, Plaintiff Best Value respectfully requests that the Court enter an order in the form set forth in the proposed Stipulation and Order attached hereto as Exhibit C, incorporating the Agreement by reference and providing, as more fully set forth therein, that:

- (a) Best Value's claims against Quality and Hermez are to be dismissed without prejudice;
- (b) The Court is to maintain jurisdiction to enforce the Agreement; and
- (c) Once all payments are made, the Parties sign a mutual release, and the Parties certify same to the Court, the Court is to dismiss the claims against Quality and Hermez with prejudice, without costs or attorney's fees to Best Value, Quality, or Hermez,

and that the Court grant all other relief to which Best Value may justly be entitled.

Dated: May 30, 2023

/s/ Maxwell Goss  
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**CERTIFICATE OF SERVICE**

This is to certify that on May 30, 2023, the undersigned caused the foregoing document to be filed using the Court's electronic filing system, which will provide notice to all counsel and unrepresented parties of record.

/s/ Maxwell Goss  
Maxwell Goss